

TO: The House and Senate state government committees
FROM: The Iowa Freedom of Information Council
DATE: Feb. 5 and Feb. 6, 2007
RE: Proposed amendments to Chapters 21 and 22, the Iowa open meetings and open records laws

- **To clarify what constitutes a meeting:**

Amend paragraph 2 of Section 21.2, Code 2007, to read as follows:

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation, ~~or action~~ or presentation of information upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

- **To discourage the practice of "walking quorums":**

Amend paragraph 2 of Section 21.2, Code 2007, to read as follows:

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. A meeting includes a series of gatherings of members who constitute less than a majority of the members at each gathering, but who collectively constitute a majority of the members, where the series of gatherings includes deliberation or action upon any matter within the scope of the governmental body's policy-making duties and where there is proof of intent to avoid the purposes of this chapter. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

- **The Iowa Freedom of Information Council supports Senate Study Bill 1042, proposed by the State of Iowa Citizens' Aide/Ombudsman, regarding meetings to evaluate professional competency of an individual and records related to applicants for government employment. But we would amend the records bill to clarify that the names of the three finalists shall be made public:**

Amend Section 21.5(1)(i), Code 2007, to read as follows:

i. To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered ~~when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session if both of the following apply:~~

(1) The individual requests a closed session in writing and states the reason for the request.

(2) The governmental body determines that a closed session is necessary to prevent needless and irreparable injury to the individual's reputation.

Amend Section 22.7(18), Code 2007, to read as follows:

NEW PARAGRAPH. d. Information contained in the communication pertaining to an applicant, candidate, or nominee being considered for employment with or appointment by a government body is a public record unless both of the following apply:

(1) The applicant, candidate, or nominee requests in writing that the information be kept confidential.

(2) The government body makes a determination that disclosure of the information will result in needless and irreparable injury to the reputation of the applicant, candidate, or nominee.

However, the government body shall disclose at least the name, city of residence, employment history, and educational history of the three final applicants, candidates, or nominees under consideration.

The government body shall notify the applicant, candidate, or nominee of the requirements of this paragraph "d".

- **To clarify the legislative intent that there is a presumption of openness for public records:**

Amend the first paragraph of Section 22.2, Code 2007, to read as follows:

22.2 RIGHT TO EXAMINE PUBLIC RECORDS — EXCEPTIONS.

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Any limitation of this right provided in this chapter or this code shall be strictly construed and questions of interpretation shall be resolved in favor of this right. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.

- **To clarify public access to some information in personnel files of public employees:**

Amend Section 22.7(11), Code 2007, to read as follows:

11. Personal information in confidential personnel and payroll records of ~~public bodies including but not limited to cities, boards of supervisors and school districts~~ government bodies which pertain to individuals who are officials, officers, or employees of the government bodies. However, the following information pertaining to an individual who is an official, officer, or employee of a government body which may be contained in confidential personnel and payroll records shall not be confidential:

a. The name and compensation paid to the individual.

b. The date the individual was employed by the government body.

- c. The positions the individual holds or has held with the government body.
- d. The individual's qualifications for the position that the individual holds or has held, including, but not limited to, educational background and work experience.
- e. Any disciplinary action taken against the individual which resulted in the individual's discharge, suspension, demotion, or loss of pay.
- f. Other information for which the legal custodian of the information makes a determination that the public's interest in access outweighs the individual's interest in confidentiality.

- **To ensure training in public meetings and records law for public employees:**

Amend Section 21.10, Code 2007, to read as follows:

21.10 INFORMATION AND TRAINING TO BE PROVIDED.

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22 and shall ensure that officials or employees who are responsible for implementing the requirements of these chapters receive proper training in the requirements of the law. The appropriate commissioner of elections shall provide that information and training to members of elected governmental bodies.